

Subject: ADVERSE ACTIONS

REFERENCES	SECTIONS
DGS Department Manual http://orpm.dgs.ca.gov/DGSManual/TOC/default.htm	Section 1338 - 1340
Human Resources Policy Memos http://hr.dgs.ca.gov/PublicationsandResources/HR+Memos.htm	01-005
Laws & Regulations http://www.dpa.ca.gov/statesys/dpa/laws.htm http://www.dpa.ca.gov/statesys/dpa/oalrules.htm	GC 3513, 19570-19589, 19590, 19682 SPB Rules Article 4., Section 51-60.10
Memo of Understanding (MOU) http://www.dpa.ca.gov/collbarg/contract/bumenu.shtm	See applicable BU
Personnel Management Policy and Procedures Manual (PMPPM)	400
Responsible Control Agency and Program	SPB
SPB/DPA Policy Memos http://www.spb.ca.gov/pinkies.htm	SPB Pinkie 5/16/88
Other:	
SPB Precedential Decisions Personnel Action Manual (PAM) Personnel Transactions Operations Procedures (PTOP) New Supervisor Orientation	http://www.spb.ca.gov/chief/precedential_decisions.htm Found in PTU Found in PTU http://10.8.18.10/NSO/default.asp

Subject: Adverse Actions

Definition/Explanation:

An adverse action is a formal administrative action taken to correct an employee's on-the-job behavior or performance. It imposes one or more penalties: official reprimand, salary reduction, suspension without pay, demotion or dismissal. The various causes for discipline are described in GC Section 19572.

The appointing power, or its authorized representative, may take adverse action against a non-managerial employee in accordance with GC Section 19574.

Employees designated as managerial under GC Section 3513 from the beginning of his/her current appointment, but whose positions are not in the Career Executive Assignment (CEA) category, shall be subject to the adverse action process stated in GC Section 19590

Policy:

Refer to the Human Resources (HR) memorandum number 01-005 "Constructive Intervention (Performance Correction)." This memorandum defines steps to take to help managers and supervisors address performance problems in their early stages up through adverse action if warranted.

Procedures:

1. Informal Consultation: Supervisors/managers should contact the Training & Performance Enhancement Section (TPES) to discuss the most appropriate constructive intervention (CI) (formal vs. informal action) and the documenting of performance issues, or to advise of a forthcoming request for formal adverse action.
2. Formal Request for Action: The office submits a chronology of the specific incidents of poor performance/conduct, with supporting documentation, and Adverse Action Information Summary, form GS 1000, to the TPES consultant. Investigation of incidents and preparation of the chronology and supporting documentation is the responsibility of the supervisor/manager requesting the action. The supervisor must ensure management support of the action being pursued.
3. Review of Case: The TPES consultant reviews chronology and documentation and recommends penalty. The TPES consultant discusses with the supervisor as necessary, including continued CI, if employee is not being terminated.
4. Preparation of Notice of Action: The Office of Legal Services (OLS) prepares a draft "Notice of Adverse Action" and recommends appropriate penalty. The draft is sent to the supervisor/manager for review, clarification and further substantiation.
5. Final Preparation/Signature of Notice of Action: The OLS obtains the necessary Office Chief's/Deputy Director's signature on the final notice.

6. Service of Notice of Action: Once the “Notice of Action” is signed, the OLS arranges to have the action served; and distributes copies to the office, the State Personnel Board (SPB), and Office of Human Resources (OHR). All documents upon which the action is based are attached to the original notice when it is served on the employee. Actions may be served either in person (by the office or process server) or by certified mail. If the action is for termination, the TPES prepares an Administrative Time Off (ATO) letter to be served simultaneously with the action, as authorized by the office taking the action.

OHR internal distribution of the “Notice” by the TPES consultant upon receipt from the OLS is as follows:

- The first page of the “Notice” is forwarded as a working copy to the appropriate Personnel Specialist/Supervisor (PS) in the OHR for processing purposes;
- One copy, without backup documents, is placed in the employee’s Official Personnel Folder (OPF);
- One copy with backup documents is placed in the Adverse Action (AA) file.

7. Appeal Rights to:

- a. Appointing Power (Skelly Hearing – “due process”) – Prior to effective date of the action, the employee has the right to respond to the department, as specified in the action. The person indicated in the “Notice” will coordinate the scheduling of the hearing with a “Skelly Officer” (a person who is from outside the office taking the action). This hearing does not involve a cross-examination of witnesses. It is the employee’s opportunity to present his/her side of the story. TPES will notify the office regarding the date and time of the hearing; the Skelly Officer makes a recommendation to the appointing power either to sustain, modify or revoke the action. A modification to the action is generally based on new facts presented at the hearing.
- b. State Personnel Board (held before an Administrative Law Judge (ALJ) with cross-examination of witnesses) – Regardless of whether an employee requests a Skelly Hearing, s/he has the right to file an appeal with the SPB within 30 calendar days of the effective date of the action. The Department receives written notice of an appeal once a hearing is scheduled. The TPES and/or the OLS will notify the office regarding the date and time of the hearing so that release time can be authorized. The OLS represents the Department at the SPB hearing and will meet with prospective witnesses in advance of the hearing.
- c. Grievance/Board of Adjustment process – Certain bargaining units may have negotiated an alternative process to the SPB hearing. If this applies the “Notice” will inform the employee of this process. (See Memorandum of Understanding (MOU) for information regarding Board of Adjustment and if it applies.) (See “Grievance” Section of this manual for detailed information on the grievance process.)

Attachments: [Adverse Action Information Summary \(GS 1000\)](#), [Arbitration Summaries](#)